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PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Application Number

10/620,811

Filed

7/17/2003

First Named Inventor

Alistair MAY

Art Unit

2629

Examiner

S. Sherman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.Registration number 32,408 attorney or agent acting under 37 CFR 1.34.

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Signature

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Typed or printed name

202-659-0100

Telephone number

24 OCT 2006

Date

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Submit multiple forms if more than one signature is required, see below*.

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

The anticipation rejection of claims 1-3, 6, 13, 15-17 and 20 over Junod et al., U.S. Published Application No. 2002/0126094 is clearly lacking in factual basis. Accordingly, review of this rejection is requested.

The Applied Prior Art

Junod discloses the use of a "hand detection" circuit with an input device such as a computer mouse, which senses the presence of a user's hand on the mouse by detecting a change in capacitance or inductance of a common antenna also used for transmitting and receiving RF signals. See Fig. 7. When the Junod device is in a sleep mode, the RF circuit is disconnected from the antenna. See Paragraph 0045. In such configuration, no sensing of any physical characteristic of a radio channel is possible as the RF circuit is powered down and/or disconnected from the antenna. The hand detector circuit in turn detects changes in capacitance or inductance of the antenna, and also does not sense any physical characteristic of a radio channel as the hand detector circuit does not even operate in the RF domain.

The Missing Claim Limitations

Claim 1 requires a radio channel sensor coupled to a radio communication unit for sensing at least one physical characteristic of the radio channel, and arranged to cause a data collection unit to enter a normal operating mode if the physical characteristic meets a pre-set threshold. This limitation is not met by Junod.

The final rejection alleges that the "hand detector" circuit of Junod is a sensor since it used to detect the presence of a user's hand. This rejection is *prima facie* deficient in that it fails to show that the "hand detector" circuit of Junod is coupled to a radio communication unit for sensing at least one physical characteristic of a radio channel as required by the claims.

The final rejection states that if the antenna is used to detect the presence of a user's hand near the device, it would have to sense a characteristic of the radio channel.

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This statement is clearly without factual basis, either from Junod or on its face. It simply does not follow that because an antenna is used to detect the proximity of a user's hand to a device, that the antenna must sense a physical characteristic of the radio channel. The final rejection has failed to make any showing that the hand detector of Junod operates in the radio frequency domain and therefore the assertion that the hand detector circuit senses a physical characteristic of the radio channel when it detects the presence of a hand, constitutes clear error.

The final rejection further asserts that the hand detector circuit communicates with the RF circuit via RF signals; this is clear error as there is no disclosure in Junod of such communication, via RF signals or otherwise. As explained in the response filed September 25, 2006, even if there were communication via RF signals between the hand detector circuit and the RF circuit, it does not follow that the hand detector circuit must detect a physical characteristic of the radio channel as required by the claims.

The final rejection further has failed to show a radio channel sensor that causes a data collection unit to enter a normal operating mode if a sensed physical characteristic meets a pre-set threshold, as required by the claims. The rejection states that "since the inputs are compared to a reference threshold that if this value is exceeded the device will change operating modes. Final Rejection at 5. This statement fails to show the claimed limitation, even if true. In particular, the final rejection has failed to show causing a data collection unit to enter a normal operating mode by a radio channel sensor. In Junod, the hand detector circuit sends a signal to a microcontroller, which then simply brings the device out of an idle state by restoring power operation to the device. See Junod at paragraphs 31 and 32.

Claim 15 requires a radio channel sensor for sensing a change in at least one physical characteristic of a radio channel that is indicative of use of the device by a user. The final rejection fails to address this limitation and fails to show that this limitation is disclosed by Junod. In particular, the final rejection does not even address sensing of a change in at least one physical characteristic of a radio channel as required by claim 15.

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The final rejection simply repeats the assertions made with respect to claim 1, which does not recite sensing of a change in a physical characteristic. Consequently, the rejection of claim 15 is plainly deficient.

Claim 20 recites a transceiver capable of transmitting and receiving signals over a wireless communication channel. As such, the statement in the final rejection (see p. 3) that the invention as claimed does not require “[t]he radio communication unit . . . to receive the incoming radio signals from the antenna” is plainly incorrect; and, to the extent that this position is the basis for rejection, clearly improper.

Secondary Prior Art Reference

The secondary reference Hinckley et al., U.S. Published Application No. 2002/0021278, combined with Junod to reject claims 7-12, 18 and 19 under 35 U.S.C. § 103, fails to add anything to Junod that would result in the claimed invention of the independent claims. Hinckley is directed to a device having multiple sensors that sense the manner in which the device is being handled by a user. Context values developed in response to sensor signals are then used to control the operation of the device.

Junod does not disclose a device capable of operating differently based on how it is being handled by a user. As such Hinckley is simply irrelevant to the disclosure of Junod and would not be combined with Junod by one skilled in the art. Moreover, the final rejection has failed to show that Hinckley discloses any of the limitations of the claims that are missing from Junod. As such, no combination of Hinckley with Junod has been shown to result in the invention as set forth in any of the claims.

Conclusion

In view of the foregoing, panel review of the appealed grounds of rejection is requested. A Notice of Appeal has been electronically filed via EFS-WEB on even date herewith.